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# Vol. III

# TRANSCRIPT OF RECORD

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# Supreme Court of the United States

## OCTOBER TERM, 1952

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## No. 26

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL., APPELLANTS,

*vs.*

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

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## No. 35

EASTERN MOTOR EXPRESS, INC., ET AL., APPELLANTS,

*vs.*

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL.

## No. 36

THE SECRETARY OF AGRICULTURE OF THE UNITED STATES, APPELLANT,

*vs.*

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA

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**No. 26—FILED MARCH 12, 1952**

**Probable jurisdiction noted April 21, 1952**

**Nos. 35 and 36—FILED APRIL 16, 1952**

**Probable jurisdiction noted May 12, 1952**

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[fol. 2277] JOHN J. BURKE was sworn and testified as follows:

Direct examination

By Mr. LaTourette:

Q. State your name, please?

A. John J. Burke.

Q. What is your business and what company do you represent?

A. I represent the Middlewest Freightways, Inc., a common motor carrier transportation company, St. Louis, Missouri.

Q. What is your position with that company?

A. President.

Q. Where are the headquarters of the company?

A. 527 South Theresa Avenue, St. Louis, Missouri.

Q. You have said that your company is engaged in the business of common carriage?

A. That is right.

Q. Does it operate in interstate commerce under and by virtue of a certificate issued by the Interstate Commerce Commission?

A. Yes, MC-26876 and MC-59421.

[fol. 2278] Q. Will you describe generally the operations conducted?

A. The operations, common carrier operation from St. Louis to Kansas City, Kansas City to Tulsa, St. Louis to Tulsa, St. Louis to Chicago and St. Louis to Louisville with some intermediate application.

Q. With respect to frequency of schedules, what are those schedules?

A. The schedules are all overnight.

Q. And do you operate a daily service?

A. Yes, we do.

Q. I take it the transportation involves the transportation of general commodities?

A. Commodities in general.

Q. Is your company authorized in any manner to engage in the transportation of commodities requiring special equipment or household goods?

A. No, we are restricted for special equipment, high explosives and household goods.

Q. So your testimony will then relate to the transportation of general commodities as we understand that term in certificated carrier?

A. That is right.

Q. Where does the company maintain terminals?

A. St. Louis, Kansas City, Tulsa, Louisville and Chicago.

Q. How many employees does it have?

[fol. 2279] A. 165.

Q. How many units of equipment does the company own and how are they broken down as between tractors, trailers and pickup trucks?

A. We have 107 pieces of company equipment which constitute 50 over-the-road trailers and 57 tractors and trucks.

Q. Does the company engage in the use of leased vehicles at any time?

A. Yes, we do.

Q. Will you tell us whether it uses vehicles under both the trip-lease arrangement as well as the term-lease arrangement?

A. We have both, we have the term which constitutes approximately 20 vehicles.

Q. You have 20 vehicles which operate under so-called term leases?

A. That is correct.

Q. Will you tell us approximately on the average what those terms run?

A. Are you speaking of trips?

Q. The length of the period of the lease.

A. The length of the period of the lease is a 90-day lease with 30-day cancellation.

Q. You have 20 vehicles operated under such a lease arrangement?

A. That is right.

Q. Now, does the company also use vehicles under so-

[fol. 2280] called trip leases?

A. Occasionally.

Q. To what extent, if you know?

A. Well, whenever there is an emergency which we term as an emergency that is brought about due to we might term it as a congestion. The congestion generally develops

over the weekend or Saturday where we have inbound freight that is coming into St. Louis and other cities in which the freight is destined to where the receivers of freight on Saturday cannot accept the deliveries, which freight has to be assembled and held and causes a congestion on Saturday requiring the double operation on Monday.

Q. Do you mean by that that a loaded vehicle will arrive at St. Louis, for example, on Friday evening or Saturday morning, and by reason of practices among industry or business in St. Louis that it is necessary to hold the vehicle as loaded until Monday when delivery may be made to the consignee?

A. That is correct.

Q. And is that situation prevailing at points such as St. Louis and Kansas City and other terminis served by the company?

A. In principal cities we are finding that congestion.

Q. Just how does that then affect the necessity for the use of trip leasgs by your company?

A. Well, naturally, it takes away the company vehicles from service, of which those company vehicles are tied up [fol. 2281] and in some occasions we have had to call on extra equipment or trip-lease equipment to take care of the demands of traffic offered to us.

Q. Would that number of trip leases vary as the condition arises? the traffic is heavy at any particular terminal?

A. That is right, it's spasmodic.

Q. Now, Mr. Burke, are you authorized to speak in behalf of any carriers other than your own company as a result of conferences held in St. Louis respecting this matter?

A. Yes. Several carriers have advocated the continuation of the trip lease from the flexibility, point of service and the burden that is sometimes brought about due to conditions beyond the control of management in relieving the operating department in leasing of equipment and disposing of freight.

Q. Are you prepared to say in this record what carriers have the same views as those which will be expressed by you?

A. Yes, I am; the Chicago Express, Anderson Motor Service Company, Byers Transportation, Lee Transportation, Mound City Forwarding Company, Eastern Express, Consolidated Freight Forwarding and PIE have indicated that they would like the continuation of the trip lease operation.

Q. Do those carriers operate into—both to and from St. Louis, Missouri?

A. Yes, they do.

Exam. Lawton: Eight carriers that you named?

[fol. 2282] A. That is right.

By Mr. LaTourette:

Q. Returning now to the practices engaged in by your own company, will you tell us the procedures that are followed when equipment is leased either on long term or trip insofar as investigation and screening of drivers is concerned and insofar as inspection of equipment is concerned?

A. In the long-term lease, in the majority of the cases it is always new equipment. The driver's application is screened as far as his reference, his ability, he has to pass a physical examination, which records are on file in our office, proving his physical fitness to handle equipment; he is given a student's trip with one of our drivers on a given territory, and if proven satisfactory he is permitted to transport one of our trailers.

Q. Now, with respect to that term lease, is the driver of the vehicle placed on the payroll of your company?

A. Yes, the driver is immediately placed on the payroll with all the payroll deductions the same as any other driver of company owned equipment.

Q. You described the manner in which you screen and train the drivers. Will you tell us what procedures are followed with respect to equipment and its examination and inspection?

A. On trip-lease units that are hired which are emergency cases the equipment is inspected, as far as the necessary safety devices such as flares, fuses, pots, tow chains, and so on; the log of the driver is inspected to ascertain

[fol. 2283] whether or not he has had sufficient time off and the load is always picked up by our city drivers, our local drivers. The load is picked up or either assembled at the platform and the man is hired for a trip from terminal to terminal, that is, from St. Louis to Kansas City, consigned to our terminal at Kansas City for distribution or delivery of the load at that destination.

Q. On this inspection of equipment that you have described, is that made with respect to both the term lease and the trip lease?

A. Oh, yes.

Q. Has it ever come to your attention that after inspection of equipment you have rejected it and not permitted it to be used in your operation?

A. Yes, there has been a lot of equipment that has been rejected due to the fact that it is not the type of equipment that can be utilized in our business for the transporting of the different types of merchandise that we may have available.

Q. Have you had occasion to reject equipment because of mechanical defects?

A. Yes, we have had that.

Q. Where those defects appear has the equipment been rejected for use in your operations?

A. The equipment has been rejected in its entirety. If the equipment is not of the nature that would transport the load with a certain degree of safety, the equipment in its [fol. 2284] entirety was rejected and not hired.

Q. What is the practice of the company with respect to requiring presentation of doctors' certificates respecting the drivers?

A. Well, your doctors' certificates on all your men, both drivers and platform men, are taken over a period of months. In other words, they are rotated. We have just recently completed all the employees but that has been on a rotation and all drivers, all city drivers, before they are accepted, before their application is screened, they are asked to have the doctors' certificates before we go any farther.

Q. Now, does this requirement for presentation of doctors' certificates apply in not only the case of company